

Respondent and its insurance carrier contend Judge Barnes erred. They argue Dr. Murati's impairment rating was based upon cruciate ligament laxity, patellofemoral

syndrome, and left thigh atrophy, which allegedly do not exist. Accordingly, they argue Dr. Murati's rating was fabricated and, therefore, it should be given no weight. Conversely, respondent and its insurance carrier argue that Dr. Jansson's two percent functional impairment rating to the left lower extremity is the only legitimate rating in the record. Consequently, they request the Board to find claimant has sustained a two percent permanent disability to the left leg.

Conversely, claimant contends the January 12, 2005, Award should be affirmed. Claimant argues it is questionable whether Dr. Jansson's functional impairment rating, despite his testimony, was derived by using the *AMA Guides*¹ (4th ed.). Claimant also argues Dr. Jansson's opinions should not be considered as the doctor did not testify that his opinions were within a reasonable degree of medical certainty or probability. Finally, claimant challenges the accuracy of Dr. Jansson's impairment rating as the doctor last saw claimant in December 2003 and the doctor did not know that claimant had sought an order for additional medical treatment after their last visit.

The only issue before the Board on this appeal is the amount of functional impairment claimant sustained to his left leg due to his July 30, 2003, accident.

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

1. Claimant injured his left knee on July 30, 2003, when he slipped and struck his knee on the edge of an I-beam. The parties stipulated claimant's accident arose out of and in the course of employment with respondent.
2. Claimant initially consulted his family physician and then respondent's insurance carrier referred him to Dr. Kenneth A. Jansson. Dr. Jansson began treating claimant in September 2003 and the next month performed an open patellar tendon exploration and debridement. During the 37-minute surgery, the doctor found and removed some thick fibrous tissue within the center of the patellar tendon.
3. Following surgery, claimant saw Dr. Jansson on three occasions including December 15, 2003, when the doctor released him without restrictions despite some ongoing swelling around the knee. In January 2004, the doctor wrote respondent's insurance carrier advising that claimant had a two percent functional impairment to the left lower extremity.

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*.

4. At his attorney's request, on January 28, 2004, claimant saw Dr. Pedro A. Murati. Claimant told Dr. Murati he did not believe Dr. Jansson's surgery provided any benefit as he continued to have left knee pain that radiated into his left shin, he was unable to kneel, and every evening he had to place a heat pack on his knee for the pain. According to Dr. Murati's medical report regarding the January 2004 examination, the doctor felt claimant had a positive patellar examination, a cruciate laxity, and mild crepitus. The doctor recommended additional treatment.
5. Claimant requested a preliminary hearing to seek additional medical treatment. At the hearing, which was held in March 2004, claimant testified he had intense pain in his left knee and a protruding knot that made it difficult to kneel. He also testified he regularly used either a heating pad or an ice pack at night due to the pain. Following the March 2004 preliminary hearing, the Judge authorized Dr. Murati to treat claimant.
6. Dr. Murati's office saw claimant again on April 12, 2004, and shortly after that visit sent claimant's attorney an April 27, 2004, letter, which set forth claimant's functional impairment rating. Using findings from the January 2004 examination (rather than the more recent April 12, 2004, visit), the doctor concluded claimant had a 10 percent impairment in his left leg due to thigh atrophy, a seven percent impairment for cruciate laxity, and a five percent impairment for patellofemoral syndrome or arthritis of the left knee, all of which comprised a 20 percent functional impairment to the lower extremity under the *AMA Guides* (4th ed.).²
7. But findings from claimant's April 12, 2004, visit were significantly different and produced a significantly different impairment rating. At the April 12, 2004, examination, which was purportedly conducted by the doctor's physician assistant, claimant did not have left thigh atrophy and, therefore, he would not have an impairment for that. Claimant did not demonstrate any laxity on the Lachman's test and, therefore, he would not have an impairment for that. Further, claimant did not have crepitus in the left knee and, therefore, he would not have an impairment for that.

Q. (Mr. Friedeman) So of the three distinct elements of the rating that you gave this man, none of them result in any number higher than zero if you base it upon the examination of April 12. Fair statement?

² Murati Depo. (Oct. 18, 2004) at 8, 9.

A. (Dr. Murati) True.³

Despite the substantial differences in the January and April 2004 clinical findings, Dr. Murati staunchly maintained during his first deposition in this claim that claimant had sustained a 20 percent functional impairment to his left lower extremity. The Board notes the April 12, 2004, report that is signed by Dr. Murati also contains the physician assistant's initials, R. A.

8. When claimant testified at the September 29, 2004, regular hearing, he continued to experience pain and stiffness in his left knee. Moreover, claimant testified that when he saw Dr. Murati in April 2004, which was their second meeting, he was advised that his injury was not within the knee but, instead, involved the tendon.

Actually at a second discussion, the second time I came in he stated with the type of injury that I had, because it wasn't actually internal within the knee, it was more down behind the tendon, it [cortisone injections] probably wouldn't serve any purpose, wouldn't assist me that much.⁴

9. Dr. Jansson also testified in this claim about claimant's permanent impairment. According to Dr. Jansson, it is unlikely claimant would experience atrophy due to the tendon injury claimant sustained. And that any joint narrowing that was found would have nothing to do with a tendon injury. Finally, the doctor disagreed that claimant had cruciate laxity as every time his office looked at claimant's knee it felt stable, which was confirmed by MRI. Also, there was nothing from claimant's history or exams that indicated a cruciate laxity. Dr. Jansson felt claimant's complaints were so minimal that he did not check the inside of his knee with an arthroscope during the October 2003 surgery although he did check claimant's knee for ligamentous stability while he was under anesthesia. The doctor testified, in part:

A lot of times if we're doing surgery and there's a problem in the patient's knee, very low index of suspicion, we'll stick an arthroscope in their knee just to check it 'cause they're under anesthesia anyway. So this guy must have been doing very well inside of his knee 'cause I didn't even put a scope in his knee when we did the surgery. It's only the ones that have no pain whatsoever

³ *Id.* at 18.

⁴ R.H. Trans. at 22.

that we limit the surgery just to the outside procedure. So this guy, I would be very surprised if he had any pathology inside of his joint.⁵

10. Although Dr. Jansson testified the two percent functional impairment rating he found was pursuant to the *AMA Guides* (4th ed.),⁶ the doctor did not explain how he arrived at that rating other than stating it represented “a little achy pain.”⁷

I told you that he had a little swelling around his tendon and I told you he had some achy pain and I gave him 2 percent because of pain. . . .⁸

11. The day after Dr. Murati’s first deposition, October 19, 2004, the doctor examined claimant again as questions had been raised regarding the differences in claimant’s clinical findings. Based upon the most recent exam and a new x-ray, the doctor rated claimant under the *AMA Guides* (4th ed.) as having a 10 percent impairment to his lower extremity due to patellar joint space narrowing, a 17 percent impairment to the lower extremity due to cruciate ligament laxity, and an eight percent impairment to the lower extremity due to thigh atrophy, all of which comprise a 31 percent left lower extremity impairment.
12. Following Dr. Murati’s October 2004 examination and second deposition, which occurred on October 27, 2004, Dr. Philip R. Mills examined claimant at respondent and its insurance carrier’s request. Dr. Mills examined claimant in mid-November 2004 and specifically looked for left thigh atrophy, left cruciate laxity, and joint space narrowing in the patellofemoral joint. But the doctor detected neither atrophy nor laxity nor crepitus, and also concluded that claimant’s x-rays indicated his joint space was normal.

CONCLUSIONS OF LAW

Claimant’s injury is limited to his left leg only. Consequently, claimant is entitled to receive permanent disability benefits under the schedule set forth in K.S.A. 44-510d.

⁵ Jansson Depo. at 14.

⁶ *Id.* at 12.

⁷ *Id.* at 36.

⁸ *Id.* at 32.

Due to the marked questions surrounding the clinical findings made by Dr. Murati's office, the doctor's testimony regarding claimant's permanent functional impairment is not persuasive. Consequently, the Board agrees with respondent and its insurance carrier that the greater weight of the evidence establishes that claimant has sustained a two percent functional impairment to his left lower extremity due to his July 30, 2003, accident at work. Accordingly, the January 12, 2005, Award should be modified.

AWARD

WHEREFORE, the Board modifies the January 12, 2005, Award, as follows:

Randy A. Vogel is granted compensation from Atlas Electric, LLC, and its insurance carrier for a July 30, 2003, accident and resulting disability. Based upon an average weekly wage of \$591.47, Mr. Vogel is entitled to receive 3.714 weeks of temporary total disability benefits at \$394.33 per week, or \$1,464.54, plus 3.93 weeks of permanent partial disability benefits at \$394.33 per week, or \$1,549.72, for a two percent permanent partial disability, making a total award of \$3,014.26, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of July, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director